

JAN 23 2007

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

IN RE:

CASE NO. 02-74350

Apyron Technologies, Inc.,

CHAPTER 11

Debtor.

JUDGE MASSEY

S. Gregory Hays, as trustee for Apyron  
Technologies, Inc.,

Plaintiff,

v.

ADVERSARY NO. 06-6177

ChemReg International, LLC,

Defendant.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

In this adversary proceeding, Plaintiff S. Gregory Hays, as trustee for the bankruptcy estate of Apyron Technologies, Inc., seeks to avoid a transfer in the amount of \$13,876.73 to Defendant ChemReg International, LLC as preferential pursuant to section 547(b) of the Bankruptcy Code. The Court has jurisdiction over this core proceeding pursuant to 28 U.S.C. §§ 1334(b) and 157(b)(2)(F). On January 19, 2006, the Court held a trial in this adversary proceeding. The following constitutes findings of fact and conclusions of law pursuant to Fed. R. Civ. P. 52, made applicable in adversary proceedings by Fed. R. Bankr. P. 7052.

In September 2002, Defendant received a check dated September 10, 2002 in the amount of \$13,876.73 drawn on an account named "Scientific Adsorbents, Inc. / A Division of Apyron Technologies, Inc." Defendant cashed the check shortly after receiving it and within the 90 days

prior to Debtor's bankruptcy petition, which was filed on December 4, 2004. In the pretrial order, the parties stipulated that the check was paid on account of an antecedent debt owed by Debtor to Defendant. Defendant does not contest the presumption of Debtor's insolvency at the time of the transfer, which arises pursuant to 11 U.S.C. § 547(f) since the transfer occurred within the 90 days prior to Debtor's bankruptcy petition. As implied in the Defendant's statement of issues to be tried, it is undisputed that the transfer allowed Defendant to receive more than it would have in a hypothetical chapter 7 liquidation. The only issue for trial was whether the property transferred was property of Debtor or another entity.

On January 2, 2007, just over two weeks before the scheduled trial date, counsel for Defendant filed a motion to withdraw on the grounds of Defendant's corporate dissolution and that Defendant's former president instructed counsel to take no further action in this matter. The Court granted this motion to withdraw in an order dated January 16, 2007. Defendant did not appear at trial.

At trial, counsel for Plaintiff proffered evidence showing that the \$13,876.73 check was a transfer of Debtor's property. In August of 1999, Debtor, then named Project Earth Industries, Inc., acquired all the assets of Scientific Adsorbents, Inc. pursuant to an asset sale agreement. Project Earth Industries later changed its name to Apyron Technologies. Debtor did not acquire any stock of Scientific Adsorbents, Inc. under the asset sale agreement. The agreement provided Debtor a license to use "Scientific Adsorbents, Inc." as a trade name. Pursuant to this license, Debtor operated Scientific Adsorbents, Inc. as a division rather than as a subsidiary. Scientific Adsorbents, Inc. did not pay an annual registration fee to the secretary of state after April 1999 and was administratively dissolved on November 9, 2002.

The Court takes judicial notice that in its Statement of Financial Affairs, Apyron listed not only itself but Scientific Adsorbents, Inc. and its taxpayer identification number in response to question 23, seeking the name of the parent corporation of any consolidated group for tax purposes. This response was in error. In addition, Apyron listed numerous bank accounts in the name of Scientific Adsorbents, Inc. As already indicated, one of those accounts, entitled "Scientific Adsorbents, Inc. / A Division of Apyron Technologies, Inc.," was the account from which the transfer at issue was made.

The continued use of the name "Scientific Adsorbents, Inc." may have initially raised in the minds of Defendant's officers and its attorneys the question of whether Scientific Adsorbents, Inc. was a separate corporation. It is quite clear, however, and should have been clear to Defendant's attorneys when they learned of the asset purchase agreement listed as one of Plaintiff's exhibits set out in the pretrial order, that Scientific Adsorbents, Inc. was merely a trade name. The confusing use of the trade name "Scientific Adsorbents, Inc." and the incorrect mention of that company in the statement of financial affairs have no bearing whatsoever on the issue of who owned the funds in the checking account used to pay Defendant.

Based on these facts, the Court finds that the \$13,876.73 transfer to Defendant was a transfer of an interest of the Debtor in property.

Plaintiff has shown each of the elements of a preferential transfer pursuant to section 547(b) of the Bankruptcy Code. Section 547(b) provides in pertinent part that:

the trustee may avoid any transfer of an interest of the debtor in property—

- (1) to or for the benefit of a creditor;
- (2) for or on account of an antecedent debt owed by the debtor before such transfer was made;

- (3) made while the debtor was insolvent;
- (4) made—
  - (A) on or within 90 days before the date of the filing of the petition; or
  - (B) between 90 days and one year before the date of the filing of the petition, if such creditor at the time of such transfer was an insider; and
- (5) that enables such creditor to receive more than such creditor would receive if—
  - (A) the case were a case under chapter 7 of this title;
  - (B) the transfer had not been made; and
  - (C) such creditor received payment of such debt to the extent provided by the provisions of this title.

11 U.S.C. § 547(b). Each of these elements is present here, making the transfer avoidable under section 547(b). Plaintiff is entitled to recover the amount of the preferential transfer from Defendant pursuant to 11 U.S.C. § 550(a)(1).

IT IS SO ORDERED.

Dated: January 22, 2007.

  
JAMES E. MASSEY  
U.S. BANKRUPTCY JUDGE